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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NSS LABS, INC.,

CASE NO. 3:18-cv-05711

Plaintiff,

v.

CROWDSTRIKE, INC., SYMANTEC
18 CORPORATION, ESET, LLC, ANTI-
19 MALWARE TESTING STANDARDS
ORGANIZATION, INC. AND DOES 1-50,
20 INCLUSIVE,

**COMPLAINT FOR VIOLATION OF THE
SHERMAN ACT, 15 U.S.C. § 1, AND THE
CARTWRIGHT ACT, CALIFORNIA
BUSINESS & PROFESSIONS CODE
§16720**

Defendants.

DEMAND FOR JURY TRIAL

1 Plaintiff NSS Labs, Inc. (“NSS Labs”) files this Complaint against CrowdStrike, Inc.
2 (“CrowdStrike”), Symantec Corporation (“Symantec”), ESET, LLC, (“ESET”), Anti-Malware
3 Testing Standards Organization, Inc. (“AMTSO”), and Does 1-50, inclusive (the “Does”)
4 (CrowdStrike, Symantec, ESET, AMTSO and the Does will be collectively referred to as
5 “Defendants”) for violations of the Sherman Act, 15 U.S.C. § 1 and the Cartwright Act, California
6 Business & Professions Code §16720.

7 **THE PARTIES**

8 1. Plaintiff NSS Labs is a corporation formed under the laws of the State of Delaware,
9 with its principal place of business located at 3711 S MoPac Expy #400, Austin, TX 78746.

10 2. Defendant CrowdStrike is a corporation formed under the laws of the State of
11 Delaware with places of business located at 150 Mathilda Place
12 Sunnyvale, California 94086 and 15440 Laguna Canyon Rd, Suite 250, Irvine, California.
13 CrowdStrike may be served through its registered agent, Corporation Services Company, 251 Little
14 Falls Drive, Wilmington, Delaware 19808.

15 3. Defendant Symantec is a corporation formed under the laws of the State of Delaware
16 with its principal place of business at 350 Ellis Street, Mountain View, California 94043. Symantec
17 may be served through its registered agent, Corporation Services Company, 251 Little Falls Drive,
18 Wilmington, Delaware 19808.

19 4. Defendant ESET is a California limited liability company with its principal place of
20 business at 610 West Ash Street, Suite 1700, San Diego, California 92101. ESET may be served
21 through its registered agent, Alexandra Albro, at the above address.

22 5. Defendant AMTSO is a corporation formed under the laws of the State of California
23 with its principal place of business located at 325 Sharon Park Dr., Suite 460, Menlo Park, California.
24 AMTSO may be served with process through its registered agent, Paul Tauber, One Montgomery St,
25 Suite 3000, San Francisco, CA. 94104. A listing of the members of AMTSO is at
26 <https://www.amtso.org/members/>.

27 6. NSS Labs is informed and believes and thereon alleges that the Does, like Defendants
28 CrowdStrike, ESET and Symantec, are (a) manufacturers and sellers of a type of cybersecurity

1 product called an Endpoint Protection (“EPP”) platform and more specifically a type of EPP product
2 known as an Advanced Endpoint Protection (“AEP”) product; and (b) are members of AMTSO.
3 “Platforms” and “products” will be used interchangeably herein, although often vendors refer to a
4 suite of EPP products as a “platform” with a common name, as does CrowdStrike with its Falcon
5 “platform” comprising various Falcon “products.”

6 7. NSS Labs is informed and believes and thereon alleges that some or all of the Does
7 have a principal place of business in this District, are incorporated in California within this District,
8 may be served with process through a registered agent within this District, and/or are otherwise
9 subject to personal jurisdiction in this District. NSS Labs may seek leave to amend this complaint to
10 allege the true names of the Does when their identities are ascertained.

11 8. Defendants CrowdStrike, Symantec, ESET and the Does will be referred to
12 collectively herein as the “EPP Vendor Conspirators.” The EPP Vendor Conspirators together with
13 AMSTO will be referred to collectively herein as the “Conspirators” or “Defendants.”

14 JURISDICTION AND VENUE

15 9. The agreements and conduct as herein alleged are per se violations of the Sherman
16 Act, 15 U.S.C. § 1 and the Cartwright Act, Cal. Bus. & Prof. Code §16720 or, alternatively,
17 unreasonably restrain trade in violation of those statutes.

18 10. Jurisdiction over Counts I through VIII for violation of the Sherman Act, 15 U.S.C. §
19 1 is based upon Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 26.

20 11. Jurisdiction over Counts IX and X for violation of the California Cartwright Act is
21 based upon 28 U.S.C. §1367(a) because they are based upon a common nucleus of operative facts
22 with NSS Labs’ federal claims, and the entire action commenced by this Complaint constitutes a
23 single case that would ordinarily be tried in one judicial proceeding.

24 12. Defendants’ acts as herein alleged were within the flow of, were intended to, and do
25 have a substantial effect on the foreign and interstate commerce of the United States.

26 13. Defendants’ acts as herein alleged were entirely or largely conducted by and through
27 their participation in the AMTSO Executive Committee, Board or Directors, and/or working groups
28 in California that resulted in AMTSO’s adoption of its “Testing Protocol Standard for the Testing of

1 Anti-Malware Solutions (Version 1.0)" on May 22, 2018 (the "AMTSO Testing Standard") in
2 California within this District and, for this reason among others, California law, including the
3 Cartwright Act, applies to Defendants' acts as herein alleged. A true and correct copy of AMTSO
4 Testing Standard is attached hereto as **Exhibit A** and is publicly available at
5 <https://www.amtso.org/wp-content/uploads/2018/05/AMTSO-Testing-Protocol-Standard-for-the-Testing-of-Anti-Malware-Solutions-v1.0.pdf>.
6

7 **INTRADISTRICT ASSIGNMENT**

8 14. Pursuant to Local Rule 3-2(c), this case is subject to district-wide assignment because
9 it is an antitrust action.

10 **INTRODUCTION**

11 15. NSS Labs, the world's leading provider of cybersecurity testing services, is the direct
12 target of a conspiracy among the EPP Vendor Conspirators, orchestrated in whole or in part through
13 AMTSO, to restrict competition in the testing of cybersecurity products that are critical to, but often
14 fail at, the protection of computer systems operated by governments, businesses and consumers. NSS
15 Labs already has suffered substantial damages flowing from the antitrust injury it suffered as a result
16 of the conspiracy and will suffer further injury, including irreparable injury such as permanent loss
17 of market share, unless the acts in furtherance of the conspiracy are enjoined.

18 16. Independent testing of cybersecurity products including EPP products is essential for
19 customers to have accurate information regarding the performance of these products because few, if
20 any, customers have the ability to accurately test EPP products for themselves, and even for those
21 who do have such ability, performing tests on EPP products would be cost-prohibitive and take far
22 too much time.

23 17. At a minimum, the Conspirators comprise (1) EPP Vendor Conspirators who offer
24 EPP platforms to customers and (2) AMTSO, an organization whose sole purpose is to impose
25 protocols and restrictions on those testing the products of EPP vendors. Although EPP product
26 testers, including NSS Labs, have been members of AMTSO, most of them have sought to prevent
27 the adoption of unlawful testing standards. EPP product testers including NSS Labs, AV-
28 Comparatives, AV-Test and SKD LABS, voiced their opposition to adoption of the AMTSO Testing

1 Standard in a variety of ways, including through feedback in committee meetings, votes, and formally
2 in a letter to the President of AMTSO sent by NSS on May 19, 2018. In that letter, NSS Labs stated,
3 among other things: “Instead of using the Draft Standard to improve product offerings and protect
4 the end user, vendors have repeatedly used it as a tool to demonstrate their dissatisfaction with tests
5 where they have underperformed or with test results that they have been unable to use to support their
6 marketing claims. Although the Draft Standard calls for testers to test any solution, it does little to
7 ensure that vendors cannot block or prevent testers from procuring the product to conduct a test, nor
8 does it prevent vendors from intentionally sabotaging a test. We have observed that the AMTSO
9 forum (currently dominated by vendors) has on more than one occasion attempted to limit what a test
10 may validate and how a test organization may engage. In short, AMTSO is being used to set the
11 terms by which a test can be conducted instead of being used to set the standards that products should
12 be expected to meet.” A true and correct copy of the May 19, 2018 letter is attached hereto as **Exhibit**

13 **B.**

14 18. NSS Labs voted against adoption of the AMTSO Testing Standard when adoption
15 was put to a vote of the AMTSO membership and is informed and believes and thereon alleges that
16 AV-Comparatives, AV-Test and SKD LABS also voted against adoption of the AMTSO Testing
17 Standard. NSS is also informed and believes and thereon alleges that other EPP product testers
18 voiced opposition to the adoption of the AMTSO Testing Standard but nevertheless voted for its
19 adoption because EPP Vendor Conspirators threatened not to use their testing services if they voted
20 against adoption of the AMTSO Testing Standard.

21 19. The EPP Vendor Conspirators, by and through AMTSO and otherwise, seek to restrict
22 and have restricted competition in the testing of EPP products and AEP products to preclude objective
23 and accurate testing, thus restricting competition among EPP products and AEP products based on
24 quality and therefore also restricting competition among EPP products and AEP products based on
25 price.

26 20. The EPP Vendor Conspirators, by and through AMTSO and otherwise, also seek to
27 restrict and have restricted competition in the markets for EPP product services testing and AEP
28 product testing services in which NSS Labs competes.

21. The EPP Vendor Conspirators orchestrated their conspiracy in whole or in part through AMTSO which, at their behest, adopted the AMTSO Testing Standard. Among other things, the AMTSO Testing Standard “provides testing protocol and behavior expectations for testers and vendors relating to the testing of anti-malware solutions. It specifies the information to communicate and how that information should be communicated between testers and vendors with products or solutions that may be included in public and private tests.” See Exhibit A.

22. Moreover, the EPP Vendor Conspirators agreed to refuse to deal with and boycott any EPP testing company seeking to test or testing EPP and AEP products that does not agree to adhere to the AMTSO Testing Standard. As set forth in further detail below, such behavior is per se illegal under the relevant antitrust laws or, at a minimum, unreasonably restrains competition in the relevant markets defined below.

23. The EPP Vendor Conspirators agreed among themselves at least as early as February 2016 that they would only allow their products to be tested by EPP testing companies who would adhere to the AMTSO Testing Standard once adopted (and to the policies reflected in the AMTSO Testing Standard even before it was adopted) and would not allow their products to be tested by testing companies like NSS Labs that did not adhere to the AMTSO Testing Standard or the policies it reflected.

24. There is no pro-competitive justification for the AMTSO Testing Standard, or even the existence of AMTSO, which even without the conspiracy among EPP Vendor Conspirators to boycott certain EPP product testers would likely lead to the *de facto* boycott of other testing protocols and therefore restrain competition in the market for EPP product testing and competition in the market for EPP products. AMTSO's efforts at determining how EPP products are tested does not advance compatibility, interoperability, consumer safety or any other pro-competitive basis for standardization. Rather, AMTSO and the AMTSO Testing Standard exist solely to enable EPP product vendors to avoid competition on quality and price with no offsetting benefits to competition.

BACKGROUND FACTS

CYBERSECURITY AND CYBERSECURITY PRODUCTS

25. According to the Department of Homeland Security, "Our daily life, economic

1 vitality, and national security depend on a stable, safe, and resilient cyberspace. Cyberspace and its
2 underlying infrastructure are vulnerable to a wide range of risks stemming from both physical and
3 cyber threats and hazards. Sophisticated cyber actors and nation-states exploit vulnerabilities to steal
4 information and money and are developing capabilities to disrupt, destroy, or threaten the delivery of
5 essential services. On May 16, 2018, the Department of Homeland Security released a strategy to
6 provide the Department with a framework to execute our cybersecurity responsibilities during the next
7 five years to keep pace with the evolving cyber risk landscape by reducing vulnerabilities and building
8 resilience; countering malicious actors in cyberspace; responding to incidents; and making the cyber
9 ecosystem more secure and resilient.” <https://www.dhs.gov/topic/cybersecurity>.

10 26. Cybersecurity is the activity, process, ability or capability to protect communications
11 systems and the information contained from and/or defend against damage, unauthorized use,
12 modification or exploitation of that system or the information contained therein. More specifically,
13 cybersecurity, computer security or IT security is the protection of computer systems from theft of or
14 damage to their hardware, software or electronic data, as well as from disruption or misdirection of
15 the services they provide. Cybersecurity includes protecting against harm that may be caused by
16 malicious data and code injection. With increasing reliance on computer systems, the Internet and
17 wireless networks such as Bluetooth and Wi-Fi, and due to the growth of “smart” devices and the
18 various tiny devices that constitute the Internet of Things, cybersecurity is of growing importance.

19 27. As described above, one category of cybersecurity product is EPP products. These
20 products are primarily designed for protecting endpoint devices (such as personal computers, laptops,
21 smartphones and tablets) in an enterprise or consumer IT environment.

22 28. An AEP product is one type of an EPP product. AEP products attempt to continuously
23 monitor threats to file systems and provide end-to-end visibility into threats for the end
24 user/enterprise, which allows users to take action against threats in real time. Continuous monitoring
25 is performed through constant analysis of suspicious code, identification of communications with
26 malicious hosts, detection of post-infection movements within networks, and secondary
27 compromises that occur within an enterprise network. AEP products are capable of providing
28 enhanced detection of malware, exploits, unknown threats, and several classes of blended threats.

1 29. NSS Labs is informed and believes and thereon alleges that despite their use of
2 cybersecurity products, in 2017 more than half of all companies experienced one or more successful
3 cyberattacks that compromised data and/or IT infrastructure.

4 **VULNERABILITIES IN EPP PRODUCTS**

5 30. In computer security, a vulnerability is a specific weakness that renders a computer
6 system open to exploitation by a given threat or susceptible to a given hazard by an attacker who is
7 able to perform unauthorized actions within a computer system and/or to prevent the performance of
8 authorized actions within a computer system.

9 31. One type of threat to cybersecurity is “malware.” Malware is any software
10 intentionally designed to cause damage to a computer, server or computer network after it is
11 implanted or introduced in some way into a computer. It can take the form of executable code, scripts
12 and active content. Other software often takes the form of computer viruses, worms, Trojan horses,
13 ransomware, spyware, adware and scareware, among others. Malware has a malicious intent, acting
14 against the interest of the computer user, and thus is distinguishable from a “software bug.”

15 32. Endpoints such as personal computers, laptops, tablets and smartphones often have
16 vulnerabilities to cyberattacks, including malware. Unfortunately, EPP products, which are intended
17 to protect endpoints from cyberattacks, often fail to do so (“EPP Security Defects”), which leave
18 endpoints they are supposed to protect open to certain cyberattacks.

19 33. In NSS Labs’ experience, EPP vendors, including AEP vendors, frequently make
20 unsubstantiated and/or overstated claims about the lack of EPP Security Defects in their products and
21 therefore the ability of their products to detect, prevent, or remediate cyberattacks perpetrated by
22 criminals and state actors. In fact, in NSS Labs’ experience, most EPP products, including AEP
23 platforms, do not live up to their performance claims and, even when they do literally live up to their
24 performance claims, the protections are often so limited that they can be evaded.

25 34. Thus, it is essential for customers and potential customers of EPP products, including
26 AEP products, to have access to accurate and unbiased tests of EPP products that are not controlled
27 or directed by the EPP product companies themselves since customers and potential customers
28 generally have no ability to evaluate the performance of EPP products for themselves.

1 35. Moreover, access to accurate and unbiased tests of EPP products that are not
2 controlled or directed by EPP product companies themselves is also necessary to encourage new
3 entrants. This is because, without such accurate and unbiased tests, a potential entrant with a superior
4 product would be unable to demonstrate its product's superiority and thus would be unable to
5 compete with established but inferior products and would not know, or find it difficult to ascertain,
6 what features and performance are necessary for successful market entry.

7 36. Cybersecurity can thus be described as a “market for lemons” where there is an
8 asymmetry of information between the buyer and the seller such that the seller knows of the product’s
9 defects but does not disclose them to the buyer or may even misrepresent them to the buyer. In a
10 market for lemons, the key to consumer protection is independent evaluations by third-parties which
11 inform and therefore empower the consumer. With the adoption of the AMTSO Testing Standard,
12 the EPP Vendor Conspirators have done the opposite of protecting consumers—they have thwarted
13 the ability of EPP product testers to conduct independent evaluations and alert the public of EPP
14 Security Defects. In other markets where vendors and customers have asymmetrical access to
15 information, one solution has been the introduction of lemon laws (like the Magnuson Moss Act of
16 1975) where customers of products that turn out not to work for reasons that could not be determined
17 at purchase can obtain a refund. Unfortunately, no similar remedy exists for defective cybersecurity
18 products.

19 **NSS LABS**

20 37. NSS Labs began its business performing “public tests” in which NSS Labs tests a
21 number of competing cybersecurity products, assesses their ability to protect computers from
22 cyberattacks, and then distributes a report containing the results of the testing to paying customers,
23 usually including the cybersecurity product companies themselves. Thus, the purpose of a public
24 test is to provide information regarding the performance of cybersecurity products to users and
25 potential users of those products, as well as to cybersecurity product vendors themselves. When
26 performing a public test, NSS Labs tests the various vendors at the same time while simulating the
27 same attacks on each product such that each product can be tested and evaluated in the same way.

28

1 38. One of NSS Labs' key competitive advantages is that its tests are considered objective
2 and reliable by customers, potential customers and vendors because while NSS Labs publishes its
3 test methodology, it does not let EPP product vendors dictate how its tests will be performed or know
4 in advance what inputs, malware or other cyberattacks their products will be subjected to. NSS Labs
5 conducts public tests without charging cybersecurity vendors to participate in these tests.

6 39. In or around 2011, one of the largest banks in the world who was (and is) a customer
7 of NSS Labs requested that NSS Labs help one of the bank's cybersecurity vendors fix a fundamental
8 flaw in a firewall product that the bank had purchased. The flaw had been uncovered by NSS Labs
9 in public testing of that firewall product. At the bank's request, NSS Labs attempted to help the
10 vendor identify the source of the problem at no charge. After spending several uncompensated weeks
11 attempting to help identify the source of the problem, NSS Labs advised its bank customer that it
12 could no longer afford to continue to provide its consulting services for free. The bank then re-
13 emphasized to NSS Labs how important it was to the bank that the flaw be found and fixed, and
14 suggested that NSS Labs charge the firewall product vendor for its services. The firewall product
15 vendor agreed to pay for NSS Labs' services which allowed the vendor to identify and fix the
16 problem, and out of which NSS Labs' private testing business began.

17 40. A "private test" is a test of only a single product's ability to protect computers from
18 cyberattack. A private test is performed under Non-Disclosure Agreement ("NDA") with the vendor,
19 and NSS Labs reports the results of the private test only to that vendor for its own internal use only.
20 The purpose of a private test is therefore to reveal to a vendor the security defects in its products, so
21 the vendor may correct them. At first, private tests were used by cybersecurity product vendors to
22 help identify and fix security defects revealed in public tests. Subsequently, many cybersecurity
23 product vendors realized that they could avoid poor public test results by subjecting their products to
24 private testing before they were released so security defects could be identified and fixed before
25 product release and public testing.

26 41. Both the public tests and private tests that NSS Labs conducts protect consumers in
27 the market for cybersecurity products generally and EPP products specifically by identifying EPP
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1 Security Defects and, in the instance of public tests, making those EPP Security Defects known to
 2 consumers.

3 **CROWDSTRIKE**

4 42. CrowdStrike, which began in business in 2011, refers to all of its cybersecurity
 5 products as part of its “Falcon Platform” or just “Falcon.”

6 43. CrowdStrike launched an AEP product in 2016 called “Falcon Host” that CrowdStrike
 7 claims “delivers and unifies next-generation antivirus, endpoint detection and response (EDR),
 8 managed threat hunting, security hygiene and threat intelligence.” A true and correct copy of a print-
 9 out from CrowdStrike’s website, available at <https://www.crowdstrike.com/products>, is attached
 10 hereto as **Exhibit C**. Falcon Host is a cloud (web) based product.

11 44. NSS Labs is informed and believes and thereon alleges that Falcon Host has numerous
 12 serious EPP Security Defects that CrowdStrike attempts to conceal from actual and potential
 13 customers by attempting to contractually prevent the testing of its product and by its support of the
 14 AMTSO Testing Standard in conjunction with the other EPP Vendor Conspirators.

15 45. NSS Labs is informed and believes and thereon alleges that CrowdStrike is attempting
 16 to conceal its EPP Security Defects in part because of the negative publicity that resulted from the
 17 Russian hacking of the Democratic National Committee (“DNC”). In particular, NSS is informed
 18 and believes and thereon alleges that according to one indictment of Russian military officers,
 19 “CrowdStrike missed a spot, and one computer infected with the [Russian’s] malware ‘remained on
 20 the DNC network until in or around October 2016.’” *See https://www.thedailybeast.com/russian-
 21 hackers-kept-dnc-backdoor-longer-than-anyone-knew.* Specifically, CrowdStrike “took steps to
 22 exclude [the Russian] intruders from the [DNC’s] networks” but “[d]espite these efforts, a Linux-
 23 based version of X-Agent, programmed to communicate with the GRU-registered domain
 24 linuxkrnl[.]net, remained on the DNC network until in or around October 2016.” *Id.*

25 46. Rather than acknowledge that it missed the existence of this Russian hacker of EPP
 26 Security Defects in its products, “CrowdStrike referred the [press’s] inquiry to the DNC.” *Id.* NSS
 27 Labs is informed and believes and thereon alleges that this refusal to acknowledge responsibility is
 28 consistent with CrowdStrike’s attempts to conceal EPP Security Defects in its products by preventing

1 testing of its EPP and AEP products unless it can control the testing by, for example, insisting on
2 adherence to the AMTSO Testing Standard.

3 47. Defendant CrowdStrike is and at all relevant times herein has been a member of
4 AMTSO and at various times here relevant one or more of its employees has served on the Executive
5 Committee and/or the Board of Directors of AMTSO.

6 **SYMANTEC**

7 48. Symantec began in business in 1982 and entered the cybersecurity market in 1989
8 with the introduction of Symantec Antivirus for the Macintosh. In August 1990 it purchased Peter
9 Norton Computing, and in 1991 introduced Norton Antivirus for personal computers operating the
10 Microsoft operating system. Since that time all Symantec Antivirus products have been marketed
11 under the Norton Antivirus name. Symantec offers a variety of EPP platforms, including an AEP
12 product called Symantec Endpoint Protection and Advanced Threat Protection Platform.

13 49. Mark Kennedy, who has worked for Symantec since 1991 and is currently a Symantec
14 “Distinguished Engineer,” is and has been since 2009 a member of the AMTSO Board of Directors.

15 **ESET**

16 50. ESET offers an AEP product called ESET Endpoint Security.

17 51. Righard J. Zwienenberg, a “Senior Research Fellow” of ESET since 2012, served as
18 a “Class 2” member of the AMTSO Board of Directors from 2016 until he resigned around the time
19 that Tony Anscombe, the “Global Security Evangelist and Industry Ambassador” for ESET,
20 delivered a presentation attacking NSS Labs and its CEO in an AMTSO meeting in Portland, Oregon.
21 This May 21, 2018, meeting was the one at which AMTSO decided to put adoption of the AMTSO
22 Testing Standard to a vote of the members of AMTSO.

23 **AMTSO**

24 52. According to AMTSO’s website, AMTSO “was founded in 2008 to improve the
25 business conditions related to the development, use, testing and rating of anti-malware products and
26 solutions.”

27

28

1 53. NSS Labs is informed and believes and thereon alleges that most EPP product
 2 vendors, including most AEP product vendors, are and at all relevant times herein have been
 3 members of AMTSO.

4 54. Unlike other organizations that promulgate testing standards, like the famous
 5 Underwriters Laboratories where testing and other standard development is open not just to
 6 companies who sell (or test) products but to “[a]ll persons directly affected by a [proposed standard],”
 7 AMTSO’s membership consists principally of cybersecurity companies and only a small number of
 8 companies who provide testing services to the cybersecurity companies. Compare
 9 <https://ulstandards.ul.com/about/developing-standards/> with <https://www.amtso.org/members/>.

10 55. AMTSO and its Board of Directors largely comprise, and are controlled by, EPP
 11 product vendors.

12 56. CrowdStrike has had and currently does have a leadership position on both AMTSO’s
 13 Board of Directors and its “Executive Team.” In particular, Brad Albrecht, CrowdStrike’s Senior
 14 Director of Technology, is the “Chief Technology Officer” of AMTSO and a member of the AMTSO
 15 “Executive Team” which “drives the day-to-day operation of the organization.”
 16 <https://www.amtso.org/the-amtso-team/>.

17 57. Mr. Albrecht was also elected to a three-year term as a “Class One” director of
 18 AMTSO at its most recent election for Board of Directors, which took place from June 5 to June 16,
 19 2018. Mr. Albrecht’s three-year term as a member of the AMTSO Board of Directors began on July
 1, 2018.

21 58. Symantec currently has, and has had at least since 2009 when Mark Kennedy joined
 22 the Board, a representative on the AMTSO Board of Directors.

23 59. ESET had a representative on the AMTSO Board of Directors from June 2016 until
 24 the May 21, 2018 AMTSO Portland meeting at which both (a) an ESET representative attacked NSS
 25 Labs and its CEO’s position regarding the draft testing protocol and (b) AMTSO decided to put
 26 adoption of the AMTSO Testing Standard to a vote of its members.

27 60. While providers of EPP testing services, including NSS Labs, are allowed to and do
 28 participate in AMTSO, they constitute a small minority of AMTSO members and are easily outvoted

1 by EPP product vendor members as indeed they were in the adoption of the AMTSO Testing
2 Standard.

3 61. NSS Labs is informed and believes and thereon alleges that since its founding,
4 AMTSO has directed virtually all its actions at attempting to restrain competition in the testing of
5 EPP products in general and in the “testing and rating of anti-malware products and solutions” in
6 particular, by prescribing rules for the testing of EPP products that are designed to allow EPP product
7 vendors to conceal the EPP Security Defects of their products from actual and potential customers.

8 62. NSS Labs is informed and believes and thereon alleges that at least as early as 2009,
9 AMTSO and its members began drafting “standards” for “testing and rating of anti-malware products
10 and solutions” that were intended to be imposed on providers of testing services for EPP products,
11 including AEP products. NSS Labs is informed and believes and thereon alleges that under these
12 draft standards, members of AMTSO were going to be required to deal only with providers of EPP
13 testing services who complied with AMTSO’s standards for testing and rating of anti-malware
14 products and solutions and were to be prohibited from dealing with EPP testing services that did not
15 comply with AMTSO’s standards. NSS Labs is informed and believes and thereon alleges that
16 AMTSO abandoned these original proposed standards due to antitrust concerns but later reinitiated
17 efforts to implement standards that eventually became the current AMTSO Testing Standard.

18 63. For example, in August 2016, AMTSO engaged in an internal email discussion among
19 its members in which CrowdStrike, through Dimitri Alperovitch and Don Larson, and Symantec,
20 through at least Mark Kennedy, participated, concerning the terms on which access to
21 VirusTotal.com, the leading platform for sharing malware (so it can be detected and blocked), should
22 be available to EPP vendors. The AMTSO EPP vendor members and AMTSO itself agreed, among
23 other things, that access should only be available to EPP vendors who are AMTSO members and
24 whose products are only tested by EPP testing services who are also AMTSO members. In addition,
25 both the EPP vendors and the EPP Testing services would be required to have agreed to adhere to
26 AMTSO’s “Fundamental Principles of Testing” available at <https://www.amtso.org/wp-content/uploads/2018/05/AMTSO-Fundamental-Principles-of-Testing-FINAL.pdf>, and to the
27 AMTSO Testing Standard once adopted. This discussion was designed to bolster the Conspirators’
28

1 efforts to restrain trade in the Relevant Markets (as defined below) by restricting access to
2 VirtusTotal.com, access to which is essential effectively to compete in the Relevant Markets.

3 **THE CONSPIRACY**

4 64. NSS Labs is informed and believes and thereon alleges that CrowdStrike, Symantec
5 and ESET conspired with each other and the other EPP Vendor Conspirators to license their products
6 under terms of use or end user license restrictions that purport to prevent competitive or comparative
7 testing of their products, and purport to prohibit their customers from allowing their copies or
8 “instances” of EPP products to be used for competitive or comparative testing.

9 65. NSS Labs is informed and believes and thereon alleges that at the RSA Security
10 Conference held in San Francisco California on February 13-17, 2017, CrowdStrike, through its
11 Chief Technology Officer, Dimitri Alperovitch, organized a meeting of the EPP Vendor Conspirators
12 with the express intent, purpose and effect of obtaining agreement among the competitors to refuse
13 to do business with companies, including specifically NSS Labs, who attempt to perform public tests
14 of their products using testing methodologies other than those agreed to by the EPP Vendor
15 Conspirators and embodied in the AMTSO Testing Standard.

16 66. The EPP Vendor Conspirators agreed that defendant AMTSO would adopt
17 “standards” for “testing and rating of anti-malware products and solutions,” that adherence to such
18 standards would be mandatory at least among the EPP Vendor Conspirators, and that at least the EPP
19 Vendor Conspirators would refuse to deal with any cybersecurity testing service that did not adhere
20 to the testing “standards” to be adopted by AMTSO.

21 67. In the months preceding the vote on adoption of the AMTSO Testing Standard,
22 AMTSO announced on or about October 19, 2017, that “[t]o ensure this documentation [relating to
23 the proposed AMTSO Testing Standard] remains reasonably private to the AMTSO community, we
24 are implementing access restrictions on some areas of the AMTSO website.” Thus AMTSO took
25 specific actions to prevent non-AMTSO members, including actual and potential customers for EPP
26 products, from learning about the proposed AMTSO Testing Standard.

27 68. Shortly thereafter, a debate arose among the AMTSO members about whether the
28 votes in favor or opposed to its adoption should be public. Several EPP testing services companies

1 expressed the view that the votes should be confidential (secret). AMTSO itself (through its president
2 and CEO, Denis Batchelder) strongly favored a public vote. While AMTSO board member Mark
3 Kennedy of Symantec was adamant in his communications with the AMTSO membership that the
4 vote should be public, the AMTSO representative of one EPP vendor member expressed why the
5 vote should be secret: "Hearing all the opinions, I think secret ballot is better. With open ballot,
6 there are chances of using information on someone's positions outside of the intended purpose of
7 developing a standard. Debates on the issues are being done in open already where anyone can voice
8 their opinions. Secret ballot also will anyone from just 'following the crowd' of the fear of intimidation
9 of voting against a majority which may be known in open ballot." Notwithstanding the request by
10 the EPP testing services AMTSO members that the vote be secret for reasons including those
11 expressed above by the EPP vendor member of AMTSO, the vote was in fact public.

12 69. On or about December 4, 2017, one of the EPP testing services company members of
13 AMTSO [not NSS Labs] sent an email to the AMTSO membership stating that some EPP vendor
14 members had threatened it with litigation if it tested their products over their objections. In the email
15 the testing service company member of AMTSO wrote: "But the main victims [of EPP vendors
16 seeking to prohibit testing] are the customers in a case like this. Testing is hard and complex. We
17 don't know how to do a perfect test. We do believe customers should test the product themselves the
18 same as they rely on professional testers. But whenever vendors provide the inexperienced customer
19 a flawed methodology to test with and meanwhile professional testers are prohibited from
20 independently testing a product, there will be no winners on the long run. Our questions are the
21 following: (1) Is it ethical behavior to reply to a 'test notification' with legal threats, without trying
22 to discuss a solution first? This question applies to both independent and sponsored tests. (2) Should
23 AMTSO allow vendors who are members to threaten labs who are members with legal action to
24 prevent them testing their products? For example threatening them BEFORE they test their products
25 - so they can have no evidence that the lab has or would do anything biased, they just prevent their
26 technology being assessed by any lab they choose. So by definition, they choose who can and who
27 can't test their technology. So a third party (customer) can only have the efficacy of a vendors
28 technology assessed by an AMTSO lab that the vendor chooses."

1 70. In response to the EPP testing services company member of AMTSO's email, Ms.
2 Jaimee King, the general counsel of AMTSO, responded, copying all AMTSO members, "You are
3 prohibited from discussing the 'status or substance of any ongoing or threatened litigation.'"

4 71. When the EPP testing services company member of AMTSO replied that it was a
5 generic question that did not involve ongoing or threatened litigation, AMTSO board member Mark
6 Kennedy of Symantec responded: The wording is "ongoing or **threatened** litigation" (emphasis
7 added).

8 72. NSS Labs is informed and believes and thereon alleges that the response of AMTSO
9 though its general counsel, and particularly the follow-on response of AMTSO board member Mark
10 Kennedy of Symantec, to the email by the EPP testing services company member of AMTSO in
11 which the entire AMTSO membership was copied was to further the conspiracy among the EPP
12 Vendor Conspirators in an attempt to intimidate EPP testing services companies who would not agree
13 to follow the AMTSO Testing Standard once adopted.

14 73. Consistent with, and in furtherance of, the conspiracy amongst the EPP Vendor
15 Conspirators, on May 19, 2018, just before the May 21, 2018 Portland Oregon AMTSO meeting,
16 Mark Kennedy of Symantec sent an email to the AMTSO membership in which he stated, among
17 other things: "Moreover, Symantec is committed to using the standards for all privately
18 commissioned tests going forward. That means if you want the money Symantec will pay for those
19 tests, you will have to follow the standards. If a tester doesn't like that, too bad. We will find one of
20 their competitors who will. If an included vendor doesn't like that, put your reasons into the
21 commentary and let the reader weigh your arguments. We intend to put our money where our vote
22 is. I encourage all of Symantec's competitors to do the same." A true and correct copy of the May
23 19, 2018 email is attached hereto as **Exhibit D**.

24 74. NSS Labs is informed and believes and thereon alleges that in response to Mr.
25 Kennedy's email and/or for other reasons, some or all of the EPP Vendor Conspirators announced in
26 an AMTSO meeting in Portland, Oregon on May 21, 2018 their agreement that they will not do
27 business with cybersecurity testing organizations that do not adhere to the AMTSO Testing Standard.

1 75. According to the AMTSO website, in May 2018 AMTSO adopted the AMTSO
2 Testing Standard (*see Exhibit A*) which it describes as a “standard” for “testing or rating of anti-
3 malware products and solutions” which “specifies the information to communicate and how that
4 information should be communicated between testers and vendors with products or solutions that
5 may be included in public and private tests.” Moreover, it is the “mission” of AMTSO to establish
6 specific rules for “testing behavior within the industry,” a mission it fulfilled with the adoption of the
7 AMTSO Testing Standard.

8 76. The purpose of the AMTSO Testing Standard is plain on its face—it is aimed at
9 providing the EPP Vendor Conspirators the opportunity to know in advance exactly where, when and
10 how their EPP products will be tested such that the EPP Vendor Conspirators can tailor their products
11 in advance to the threats against which their products will be tested and score better on any public or
12 private test. But knowing how one’s product will be tested in advance defeats the entire purpose of
13 independent third-party testing, no less than a student knowing the questions and answers before a
14 test defeats the entire purpose of a school test. Indeed, obtaining such knowledge is usually called
15 “cheating.”

16 77. The goal of the AMTSO Testing Standard is manifest throughout its provisions. For
17 example, Section 4.1 of AMTSO Testing Standard provides: “Tester shall provide notification of a
18 Test Plan to all potential Test Subject Vendors” and that the “Test Plan notification shall be made no
19 more than two (2) calendar months, and no less than five (5) Business Days, before the
20 Commencement Date of a Test. This gives EPP Vendor Conspirators who do not want their products
21 tested the ability to block testing before it has begun.

22 78. Section 6.1.1 requires a tester to state in the Test Plan a “stated intent . . . to follow
23 th[e] AMTSO Standard.” Section 6.1.2 requires that the Test Plan reveal the “types of Products that
24 are intended to be included in the Test.” Section 6.1.3 requires the Test Plan to reveal: “The purpose
25 of the Test, including the type(s) of threats the Test Subjects will be tested against.” Section 6.1.4
26 requires that the Test Plan reveal the “Commencement Date of the Test, or a range of dates during
27 which the Test may commence.” Section 6.1.6 requires the Test Plan to reveal: “A clear definition
28 of the methodology of the Test, which shall include a description of the testing environment and what

1 the Test is intending to achieve.” Section 6.1.7 requires the Test Plan to reveal: “A statement of
2 intention of Product versions, configurations to be applied, and which functionality of the Products
3 will be tested.” Section 6.1.8 requires the Test Plan to reveal: “An overview of the Test’s scoring
4 and certification plan.” Section 6.1.9 requires the Test Plan to reveal: “Instructions on how the Test’s
5 results can be disputed.” Section 6.1.11 requires the Test Plan to reveal: “A reasonable amount of
6 information on sample provenance and sample Collection strategy.” Section 6.1.12 requires the Test
7 Plan to reveal: “A clear description of how samples will be Curated, and how and when feedback
8 will be solicited and processed and what evidence will be provided.” Section 6.4 requires tester to
9 “notify all Test Subject Vendors of any significant changes to previously communicated Test Plans.”.

10 79. These provisions give the EPP Vendor Conspirators the ability to tailor their products
11 in advance to the threats against which their products will be tested. These provisions also defeat the
12 purpose of independent third-party testing by giving the EPP Vendor Conspirators the ability to cheat
13 the tests they will be subject to and to give consumers the false impression that EPP products are free
14 from EPP Security Defects when in fact they are not. Misleading the consumer and the public
15 regarding the effectiveness of cybersecurity products has a direct effect on public safety and the
16 safety of businesses and individuals who rely on EPP products. These provisions also give the EPP
17 Vendor Conspirators the opportunity to discredit tests that do not provide ahead of time full
18 disclosure of when, where and how the tests will be conducted and allows the EPP Vendor
19 Conspirators to credit only those tests that they deem appropriate. These provisions also give the
20 EPP Conspirator Vendors the opportunity to discriminate between those testers and tests that provide
21 them with the most favorable results. These provisions also arm the EPP Vendor Conspirators with
22 a mechanism to intimidate and shun those testers who do not disclose the exact tests they intend to
23 perform prior to running a test.

24 80. These provisions serve no purpose other than giving EPP Vendor Conspirators the
25 ability to tailor their products in advance to the threats against which their products will be tested,
26 obviating the entire purpose of objective testing.

27 81. Section 9.2.5 further requires EPP testing services to “provide AMTSO with
28 appropriate data to run the compliance confirmation process that is not otherwise included in the

1 publicly released final Test results, including the Test Plan, Test results, and commentary.” This
2 effectively requires EPP testing services to hand over their intellectual property to AMTSO. It also
3 allows AMTSO to keep the EPP Vendor Conspirators informed about which cybersecurity testing
4 companies are in fact adhering to the AMTSO Testing Standard so that adherence to the goals of the
5 conspiracy could be verified.

6 82. Adoption of at least the foregoing provisions of the AMTSO Testing Standard allows
7 the EPP Vendor Conspirators to rig in advance the outcome of tests performed by testing services
8 who adhere to the AMTSO Testing Standard because EPP Vendor Conspirators know in advance
9 how their products will be tested. The outcome of the tests therefore will misrepresent to the public
10 the effectiveness of their EPP products and conceal the products’ vulnerability to EPP Security
11 Defects.

12 83. Consistent with, and in furtherance of, the conspiracy among the EPP Vendor
13 Conspirators, in June 2018, an agenda for an AMTSO meeting concerning the adoption of the
14 AMTSO Testing Standard had as one of only four agenda items: “Driving Adoption: Companies
15 Requiring AMTSO Standards.” NSS Labs is informed and believes and thereon alleges that the
16 meeting agenda confirms that Defendants intend that at least the EPP Vendor Conspirators will refuse
17 to deal with cybersecurity testing companies that do not adhere to the AMTSO Testing Standard.

18 84. Also consistent with, and in furtherance of, the conspiracy, on or about September 5,
19 2018, Dennis Batchelder, the President of AMTSO, posted on the AMTSO website a blog which
20 states in part: “We expect to see the first tests reaching full compliance with the AMTSO Standard
21 in the next few weeks, *and will continue to strongly encourage all testing organizations, and other*
22 *parties engaging in anti-malware testing, to follow the AMTSO Standard wherever possible.*
23 (Emphasis added.) A true and correct copy of the September 5, 2018 AMTSO blog post is attached
24 hereto as **Exhibit E**.

25 85. Yet less than two weeks later, on September 15, 2018, Dennis Batchelder admitted
26 that there were competitive issues in adopting the AMTSO Testing Standard in an email to Mark
27 Kennedy, AMTSO board member from Symantec, discussing potential conflicts around adopting a
28

1 different proposed standard: “We created a standard that applies to testers and vendors [the AMTSO
2 Testing Standard].... that’s pretty conflicted, too.”

3 86. NSS Labs is informed and believes and thereon alleges that the EPP Vendor
4 Conspirators conspired with themselves and AMTSO to refuse to deal with EPP testing companies
5 that do not adhere to the AMTSO Testing Standard.

6 87. NSS Labs objected to the AMTSO Testing Standard prior to its adoption and raised
7 concerns about the conflicts of interest of those driving the adoption of the AMTSO Testing Standard
8 and the barriers the AMTSO Testing Standard erects to independent third-party testing of EPP
9 products.

10 88. NSS Labs is informed and believes and thereon alleges that other testers of EPP
11 products raised similar concerns.

12 89. NSS Labs is informed and believes and thereon alleges that since entering into the
13 conspiracy alleged herein, none of the Defendants ever (a) undertook affirmative steps inconsistent
14 with the object of the conspiracy to disavow or defeat the goal or purposes of the conspiracy; (b)
15 acted in a manner reasonably calculated to notify its coconspirators that it was no longer participating
16 in the conspiracy; or (c) disclosed the conspiracy to law enforcement authorities. Accordingly, NSS
17 Labs is informed and believes and thereon alleges that each of the Defendants remains fully liable as
18 a co-conspirator whether or not at some point it ceased active participation in the conspiracy.

19 **RELEVANT MARKETS**

20 90. NSS Labs is informed and believes and thereon alleges that the acts as herein alleged
21 affect commerce in four relevant markets.

22 91. NSS Labs is informed and believes and thereon alleges that the first relevant market
23 affected by the acts herein alleged is the national market for EPP products (the “EPP Product
24 Market”).

25 92. NSS Labs is informed and believes and thereon alleges that the second relevant market
26 affected by the acts herein alleged is the national market for AEP products (the “AEP Product
27 Market”).

28

1 93. NSS Labs is informed and believes and thereon alleges that the third relevant market
2 affected by the acts herein alleged is the national market for EPP product testing services (the “EPP
3 Testing Market”).

4 94. NSS Labs is informed and believes and thereon alleges that the fourth relevant market
5 affected by the acts herein alleged is the national market for AEP product testing services (the “AEP
6 Testing Market”).

7 95. The EPP Product Market, the AEP Product Market, the EPP Testing Market and the
8 AEP Testing Market will be referred to collectively as the “Relevant Markets.”

9 **EFFECT ON INTERSTATE COMMERCE**

10 96. The acts herein alleged have an effect on interstate commerce, in particular in the EPP
11 Product Market and the AEP Product Market by (a) restricting information regarding and therefore
12 the quality of EPP products and AEP products; (b) discouraging entry, and therefore keeping prices
13 high, in the EPP Product Market and the AEP Product Market because vulnerabilities in EPP products
14 and AEP products are concealed from consumers, thus discouraging entry of new EPP products and
15 new AEP products because new products cannot compete based on security quality; and (c) keeping
16 prices artificially high in the EPP Product Market and the AEP Product Market by concealing EPP
17 Security Defects from consumers who would demand better performing products at lower prices if
18 the EPP Security Defects were known to them.

19 97. The acts herein alleged also have an effect on interstate commerce, in particular in the
20 EPP Testing Market and the AEP Testing Market by preventing competition on quality, and therefore
21 also on price, because all EPP testing companies and AEP testing companies are required to adhere
22 to the AMTSO Testing Standard or else be boycotted by at least the EPP Vendor Conspirators and
23 likely other EPP product members of AMTSO.

24 **ANTITRUST INJURY**

25 98. NSS Labs has suffered antitrust injury as a result of the acts herein alleged because it
26 is the direct and principal target of the concerted refusal to deal/group boycott with EPP Testing
27 companies and AEP Testing companies that do not adhere to the AMTSO Testing Standard.

1 99. Because one of NSS Labs' key competitive advantages is that its tests are considered
2 objective and reliable because it does not let EPP product vendors and AEP product vendors know
3 how its tests will be performed or to what malware or what inputs that are not malware their products
4 will be subjected, NSS Labs is being forced to choose between adhering to the AMTSO Testing
5 Standard and losing its competitive advantage and therefore losing revenue and profits, on the one
6 hand, or not adhering to the AMTSO Testing Standard and having its testing services boycotted by
7 the EPP Vendor Conspirators.

8 100. Because NSS Labs has chosen to preserve its competitive advantage by not adhering
9 to the AMTSO Testing Standard, Defendants' acts herein alleged have reduced the value of NSS
10 Labs' public testing because of its inability to test all EPP products and AEP products, including
11 some of the significant EPP products and AEP products on the market whose vendors refuse to deal
12 with testing companies, like NSS Labs, who do not adhere to the AMTSO Testing Standard. As a
13 result, NSS Labs has lost sales and profits from the sale and license of its public testing reports,
14 including its AEP Group Test reports, because fewer customers purchase reports that do not include
15 all market participants than would purchase reports that included all market participants.

16 101. In addition, NSS Labs has lost sales and profits from the sale and license of its public
17 testing reports, including its AEP Group Test reports, because it cannot charge customers who
18 purchase reports that do not include all market participants as much as it could charge for reports that
19 included all market participants.

20 102. Further, NSS Labs has lost sales and profits from the sale and license of marketing
21 rights to its public testing reports, including its AEP Group Test reports, because it cannot charge as
22 much for marketing rights to customers which do not include all market participants as it could charge
23 for marketing rights to reports that included all market participants.

24 103. Finally, NSS Labs has lost sales and profits from the performance of private testing
25 for both cybersecurity product vendors and their actual and potential customers, for which NSS Labs
26 does charge a fee, because the EPP Vendor Conspirators purport to prohibit even private testing of
27 their products by testing companies who do not adhere to the AMTSO Testing Standard.

28

COUNT I

PER SE VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1
(GROUP BOYCOTT)

104. NSS Labs realleges paragraphs 1-103, inclusive.

105. Defendants by and through their officers, directors, employees, agents or representatives, entered into and engaged in an unlawful contract, combination, and conspiracy in restraint of trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

106. Defendants have refused to deal with NSS Labs because NSS Labs does not adhere to the AMTSO Testing Standard both as adopted and as agreed to by the EPP Vendor Conspirators before the adoption of the AMTSO Testing Standard.

107. Defendants' refusal to deal was pursuant to an agreement among the EPP Vendor Conspirators who are direct competitors of each other.

108. Defendants' contracts, combinations, and/or conspiracies are *per se* violations of Section 1 of Sherman Act, 15 U.S.C. § 1.

109. Defendants' refusal to deal affected interstate commerce as herein alleged.

110. Defendants' refusal to deal disadvantaged NSS Labs by denying it access to the market for testing EPP products generally and AEP products in particular as herein alleged.

111. NSS Labs was injured in its business or property as a result of Defendants' refusal to deal as herein alleged.

112. NSS Labs has suffered antitrust injury as a result of Defendants' unlawful acts as herein alleged.

113. NSS Labs seeks damages according to proof, which damages shall be automatically trebled pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a).

114. NSS Labs seeks an injunction against further wrongful acts of Defendants pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 26.

115. NSS Labs is automatically entitled to its reasonable attorney fees pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 15(a).

1 116. NSS Labs is automatically entitled to its costs of suit pursuant to Section 4(a) of the
2 Clayton Act, 15 U.S.C. § 15(a).

3 **COUNT II**

4 **VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1**

5 **UNDER THE RULE OF REASON**

6 **(GROUP BOYCOTT)**

7 117. NSS Labs realleges paragraphs 1-103, inclusive.

8 118. Defendants by and through their officers, directors, employees, agents or
9 representatives, entered into and engaged in an unlawful contract, combination, and conspiracy in
10 restraint of trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

11 119. Defendants have refused to deal with NSS Labs because NSS Labs does not adhere to
12 the AMTSO Testing Standard both as adopted and as agreed to by the EPP Vendor Conspirators
13 before the adoption of the AMTSO Testing Standard.

14 120. Defendants' refusal to deal was pursuant to an agreement among the EPP Vendor
15 Conspirators who are direct competitors of each other.

16 121. Defendants' contracts, combinations, and/or conspiracies unreasonably restrain trade
17 in one or more of the Relevant Markets in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

18 122. Defendants' refusal to deal affected interstate commerce as herein alleged.

19 123. Defendants' refusal to deal disadvantaged NSS Labs by denying it access to the
20 market for testing EPP products generally and AEP products in particular as herein alleged.

21 124. NSS Labs was injured in its business or property as a result of Defendants' refusal to
22 deal as herein alleged.

23 125. NSS Labs has suffered antitrust injury as a result of Defendants' unlawful acts as
24 herein alleged.

25 126. NSS Labs seeks damages according to proof, which damages shall be automatically
26 trebled pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a).

27 127. NSS Labs seeks an injunction against further wrongful acts of Defendants pursuant to
28 Section 4(a) of the Clayton Act, 15 U.S.C. § 26.

128. NSS Labs is automatically entitled to its reasonable attorney fees pursuant to Section
15 of the Clayton Act, 15 U.S.C. § 15(a).

129. NSS Labs is automatically entitled to its costs of suit pursuant to Section 4(a) of the
Clayton Act, 15 U.S.C. § 15(a).

5 COUNT III

6 **PER SE VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1** 7 **(BEING DISADVANTAGED BY A MEMBERSHIP ORGANIZATION)**

8 130. NSS Labs realleges paragraphs 1-103, inclusive.

9 131. AMTSO by and through its officers, directors, employees, agents or representatives,
10 entered into and engaged in an unlawful contract, combination, and conspiracy in restraint of trade
11 and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

12 132. AMTSO has enacted the anti-competitive AMTSO Testing Standard and encouraged
13 its members to refuse to deal with NSS Labs because NSS Labs does not adhere to the AMTSO
14 Testing Standard both as adopted and as agreed to by the EPP Vendor Conspirators before the
15 adoption of the AMTSO Testing Standard.

16 133. Defendants' refusal to deal was pursuant to an agreement orchestrated by AMTSO.

17 134. AMTSO's and Defendants' contracts, combinations, and/or conspiracies are *per se*
18 violations of Section 1 of Sherman Act, 15 U.S.C. § 1.

19 135. AMTSO's acts as herein alleged and Defendants' refusal to deal affected interstate
20 commerce as herein alleged.

21 136. AMTSO's acts as herein alleged and Defendants' refusal to deal disadvantaged NSS
22 Labs by denying it access to the market for testing cybersecurity products generally and AEP
23 products in particular as herein alleged.

24 137. NSS Labs was injured in its business or property as a result of AMTSO's acts as herein
25 alleged and Defendants' refusal to deal as herein alleged.

26 138. NSS Labs has suffered antitrust injury as a result of AMTSO's unlawful acts as herein
27 alleged.

139. NSS Labs seeks damages according to proof, which damages shall be automatically
 2 trebled pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a).

140. NSS Labs seeks an injunction against further wrongful acts of AMTSO pursuant to
 2 Section 4(a) of the Clayton Act, 15 U.S.C. § 26.

141. NSS Labs is automatically entitled to its reasonable attorney fees pursuant to Section
 2 15 of the Clayton Act, 15 U.S.C. § 15(a).

142. NSS Labs is automatically entitled to its costs of suit pursuant to Section 4(a) of the
 2 Clayton Act, 15 U.S.C. § 15(a).

9 **COUNT IV**

10 **VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1**

11 **UNDER THE RULE OF REASON**

12 **(BEING DISADVANTAGED BY A MEMBERSHIP ORGANIZATION)**

143. NSS Labs realleges paragraphs 1-103, inclusive.

144. AMTSO by and through its officers, directors, employees, agents or representatives,
 15 entered into and engaged in an unlawful contract, combination, and conspiracy in restraint of trade
 16 and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

145. AMTSO has enacted the anti-competitive AMTSO Testing Standard and encouraged
 18 its members to refuse to deal with NSS Labs because NSS Labs does not adhere to the AMTSO
 19 Testing Standard both as adopted and as agreed to by the EPP Vendor Conspirators before the
 20 adoption of the AMTSO Testing Standard.

146. Defendants' refusal to deal was pursuant to an agreement orchestrated by AMTSO.

147. AMTSO's and Defendants' contracts, combinations, and/or conspiracies
 23 unreasonably restrain trade in one or more of the Relevant Markets in violation of Section 1 of
 24 Sherman Act, 15 U.S.C. § 1.

148. AMTSO's acts as herein alleged and Defendants' refusal to deal affected interstate
 26 commerce as herein alleged.

149. AMTSO's acts as herein alleged and Defendants' refusal to deal disadvantaged NSS
 28 Labs by denying it access to the market for testing cybersecurity products generally and AEP

1 products in particular as herein alleged and AMTSO has no efficiency-increasing justification for the
 2 restrictions imposed by the AMTSO Testing Standard.

3 150. NSS Labs was injured in its business or property as a result of AMTSO's acts as herein
 4 alleged and Defendants' refusal to deal as herein alleged.

5 151. NSS Labs has suffered antitrust injury as a result of AMTSO's unlawful acts as herein
 6 alleged.

7 152. NSS Labs seeks damages according to proof, which damages shall be automatically
 8 trebled pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a).

9 153. NSS Labs seeks an injunction against further wrongful acts of AMTSO pursuant to
 10 Section 4(a) of the Clayton Act, 15 U.S.C. § 26.

11 154. NSS Labs is automatically entitled to its reasonable attorney fees pursuant to Section
 12 15 of the Clayton Act, 15 U.S.C. § 15(a).

13 155. NSS Labs is automatically entitled to its costs of suit pursuant to Section 4(a) of the
 14 Clayton Act, 15 U.S.C. § 15(a).

15 **COUNT V**

16 **PER SE VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1**
 17 **(USE OF MEMBERSHIP ORGANIZATION TO COMMIT ANTITRUST VIOLATIONS)**

18 156. NSS Labs realleges paragraphs 1-103, inclusive.

19 157. Defendants by and through their officers, directors, employees, agents or
 20 representatives, entered into and engaged in an unlawful contract, combination, and conspiracy in
 21 restraint of trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

22 158. Defendants have used AMTSO to enact the anti-competitive AMTSO Testing
 23 Standard and refused to deal with NSS Labs because NSS Labs does not adhere to the AMTSO
 24 Testing Standard both as adopted and as agreed to by the EPP Vendor Conspirators before the
 25 adoption of the AMTSO Testing Standard.

26 159. Defendants' refusal to deal was pursuant to an agreement among the EPP Vendor
 27 Conspirators who are direct competitors of each other.

160. Defendants' contracts, combinations, and/or conspiracies are *per se* violations of
Section 1 of Sherman Act, 15 U.S.C. § 1.

161. Defendants' refusal to deal affected interstate commerce as herein alleged.

162. Defendants' refusal to deal disadvantaged NSS Labs by denying it access to the
market for testing cybersecurity products generally and AEP products in particular as herein alleged.

163. NSS Labs was injured in its business or property as a result of Defendants' refusal to
deal as herein alleged.

164. NSS Labs has suffered antitrust injury as a result of Defendants' unlawful acts as
herein alleged.

165. NSS Labs seeks damages according to proof, which damages shall be automatically
trebled pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a).

166. NSS Labs seeks an injunction against further wrongful acts of Defendants pursuant to
Section 4(a) of the Clayton Act, 15 U.S.C. § 26.

167. NSS Labs is automatically entitled to its reasonable attorney fees pursuant to Section
15 of the Clayton Act, 15 U.S.C. § 15(a).

168. NSS Labs is automatically entitled to its costs of suit pursuant to Section 4(a) of the
Clayton Act, 15 U.S.C. § 15(a).

18 COUNT VI

19 VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1

20 UNDER THE RULE OF REASON

21 **(USE OF MEMBERSHIP ORGANIZATION TO COMMIT ANTITRUST VIOLATIONS)**

22 169. NSS Labs realleges paragraphs 1-103, inclusive.

23 170. Defendants by and through their officers, directors, employees, agents or
24 representatives, entered into and engaged in an unlawful contract, combination, and conspiracy in
25 restraint of trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

26 171. Defendants have used AMTSO to enact the anti-competitive AMTSO Testing
27 Standard and refused to deal with NSS Labs because NSS Labs does not adhere to the AMTSO

1 Testing Standard both as adopted and as agreed to by the EPP Vendor Conspirators before the
2 adoption of the AMTSO Testing Standard.

3 172. Defendants' refusal to deal was pursuant to an agreement among the EPP Vendor
4 Conspirators who are direct competitors of each other.

5 173. Defendants' contracts, combinations, and/or conspiracies Defendants' contracts,
6 combinations, and/or conspiracies unreasonably restrain trade in one or more of the Relevant Markets
7 in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

8 174. Defendants' refusal to deal affected interstate commerce as herein alleged.

9 175. Defendants' refusal to deal disadvantaged NSS Labs by denying it access to the
10 market for testing cybersecurity products generally and AEP products in particular as herein alleged.

11 176. NSS Labs was injured in its business or property as a result of Defendants' refusal to
12 deal as herein alleged.

13 177. NSS Labs has suffered antitrust injury as a result of Defendants' unlawful acts as
14 herein alleged.

15 178. NSS Labs seeks damages according to proof, which damages shall be automatically
16 trebled pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a).

17 179. NSS Labs seeks an injunction against further wrongful acts of Defendants pursuant to
18 Section 4(a) of the Clayton Act, 15 U.S.C. § 26.

19 180. NSS Labs is automatically entitled to its reasonable attorney fees pursuant to Section
20 15 of the Clayton Act, 15 U.S.C. § 15(a).

21 181. NSS Labs is automatically entitled to its costs of suit pursuant to Section 4(a) of the
22 Clayton Act, 15 U.S.C. § 15(a).

23 **COUNT VII**

24 **PER SE VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1**

25 **AGAINST ONLY AMTSO**

26 **(MEMBERSHIP ORGANIZATION IS INHERENTLY ANTICOMPETITIVE)**

27 182. NSS Labs realleges paragraphs 1-103, inclusive.

183. AMTSO is an inherently anti-competitive organization by virtue of its stated purpose,
 2 which ultimately led to the adoption of the unlawful AMTSO Testing Standard and, through its
 3 members, officers, directors, employees, agents or representatives, entered into and engaged in an
 4 unlawful contract, combination, and conspiracy in restraint of trade and commerce in violation of
 5 Section 1 of the Sherman Act, 15 U.S.C. § 1.

184. The existence and operation of AMTSO itself is a *per se* violations of Section 1 of
 7 Sherman Act, 15 U.S.C. § 1.

185. AMTSO has disadvantaged NSS Labs by denying it access to the market for testing
 9 cybersecurity products generally and AEP products in particular as herein alleged.

186. NSS Labs was injured in its business or property as a result of AMTSO's existence
 11 and conduct as herein alleged.

187. NSS Labs has suffered antitrust injury as a result of Defendants' unlawful acts as
 13 herein alleged.

188. NSS Labs seeks damages according to proof, which damages shall be automatically
 15 trebled pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a).

189. NSS Labs seeks an injunction against further wrongful acts of Defendants pursuant to
 17 Section 4(a) of the Clayton Act, 15 U.S.C. § 26.

190. NSS Labs is automatically entitled to its reasonable attorney fees pursuant to Section
 19 15 of the Clayton Act, 15 U.S.C. § 15(a).

191. NSS Labs is automatically entitled to its costs of suit pursuant to Section 4(a) of the
 21 Clayton Act, 15 U.S.C. § 15(a).

22 COUNT VIII

23 VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1 24 UNDER THE RULE OF REASON

25 (MEMBERSHIP ORGANIZATION IS INHERENTLY ANTICOMPETITIVE)

192. NSS Labs realleges paragraphs 1-103, inclusive.

193. AMTSO is an inherently anti- competitive organization by virtue of its stated purpose,
 28 which ultimately led to the adoption of the unlawful AMTSO Testing Standard and, through its

1 members, officers, directors, employees, agents or representatives, entered into and engaged in an
2 unlawful contract, combination, and conspiracy in restraint of trade and commerce in violation of
3 Section 1 of the Sherman Act, 15 U.S.C. § 1.

4 194. The existence and operation of AMTSO itself unreasonably restrain trade in one or
5 more of the Relevant Markets in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 and there
6 is no efficiency-increasing justification for the existence of AMTSO whose objection is the adoption
7 to anti-competitive restrictions on the testing of EPP products such as those embodied in the AMTSO
8 Testing Standard

9 195. AMTSO has disadvantaged NSS Labs by denying it access to the market for testing
10 cybersecurity products generally and AEP products in particular as herein alleged.

11 196. NSS Labs was injured in its business or property as a result of AMTSO's existence
12 and conduct as herein alleged.

13 197. NSS Labs has suffered antitrust injury as a result of Defendants' unlawful acts as
14 herein alleged.

15 198. NSS Labs seeks damages according to proof, which damages shall be automatically
16 trebled pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a).

17 199. NSS Labs seeks an injunction against further wrongful acts of Defendants pursuant to
18 Section 4(a) of the Clayton Act, 15 U.S.C. § 26.

19 200. NSS Labs is automatically entitled to its reasonable attorney fees pursuant to Section
20 15 of the Clayton Act, 15 U.S.C. § 15(a).

21 201. NSS Labs is automatically entitled to its costs of suit pursuant to Section 4(a) of the
22 Clayton Act, 15 U.S.C. § 15(a).

COUNT IX

PER SE VIOLATION OF THE CARTWRIGHT ACT,

CALIFORNIA BUSINESS & PROFESSIONS CODE § 16720

26 202. NSS Labs realleges paragraphs 1-103, inclusive.

27 203. Defendants by and through their officers, directors, employees, agents or
28 representatives, entered into and engaged in an unlawful contract, combination, and conspiracy in

1 restraint of trade and commerce in violation of the Cartwright Act, California Business and
2 Professions Code § 16720.

3 204. NSS Labs is a “person” within the meaning of the Cartwright Act, California Business
4 and Professions Code § 16720.

5 205. Defendants’ contracts, combinations, and/or conspiracies are *per se* violations of the
6 Cartwright Act, California Business and Professions Code § 16720.

7 206. NSS Labs has suffered antitrust injury as a result of Defendants’ unlawful acts as
8 herein alleged.

9 207. NSS Labs seeks damages according to proof, which damages shall be automatically
10 trebled pursuant to the Cartwright Act, California Business and Professions Code § 16750(a).

11 208. NSS Labs seeks an injunction against further wrongful acts of Defendants pursuant to
12 the Cartwright Act, California Business and Professions Code § 16750(a).

13 209. NSS Labs is automatically entitled to its reasonable attorney fees pursuant to the
14 Cartwright Act, California Business and Professions Code § 16750(a).

15 210. NSS Labs is automatically entitled to its costs of suit pursuant to the Cartwright Act,
16 California Business and Professions Code § 16750(a).

17 **COUNT X**

18 **VIOLATION OF THE CARTWRIGHT ACT,**
19 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 16720,**
20 **UNDER THE RULE OF REASON**

21 211. NSS Labs realleges paragraphs 1-103, inclusive.

22 212. Defendants by and through their officers, directors, employees, agents or
23 representatives, entered into and engaged in an unlawful contract, combination, and conspiracy in
24 restraint of trade and commerce in violation of the Cartwright Act, California Business and
25 Professions Code § 16720.

26 213. NSS Labs is a “person” within the meaning of the Cartwright Act, California Business
27 and Professions Code § 16720.

214. Defendants' contracts, combinations, and/or conspiracies unreasonably restrain trade in one or more of the Relevant Markets in violation of the Cartwright Act, California Business and Professions Code § 16720.

215. NSS Labs has suffered antitrust injury as a result of Defendant's unlawful acts as herein alleged.

216. NSS Labs seeks damages according to proof, which damages shall be automatically trebled pursuant to the Cartwright Act, California Business and Professions Code § 16750(a).

217. NSS Labs seeks an injunction against further wrongful acts of defendants pursuant to the Cartwright Act, California Business and Professions Code § 16750(a).

218. NSS Labs is automatically entitled to its reasonable attorney fees pursuant to the Cartwright Act, California Business and Professions Code § 16750(a).

219. NSS Labs is automatically entitled to its costs of suit pursuant to the Cartwright Act, California Business and Professions Code § 16750(a).

PRAYER FOR RELIEF

NSS Labs prays for relief as follows:

a) That the Court adjudge and decree that Defendants' acts as herein alleged violate Section 1 of the Sherman Act; 15 U.S.C. § 1;

b) That the Court adjudge and decree that Defendants' acts as herein alleged violate the Cartwright Act, California Business & Professions Code §16720, et seq.;

c) That Defendants, and each of them, and all persons acting in concert with them, be temporarily restrained, preliminarily enjoined and permanently enjoined and restrained from acting pursuant to the agreements herein alleged and from establishing any similar agreement unreasonably restricting competition except as prescribed by the Court;

d) That NSS Labs be awarded damages according to proof, and that such damages be automatically trebled as required by Section 4 of the Clayton Act, 15 U.S.C. § 15 and California Business & Profession Code § 16750(a);

e) That NSS Labs be automatically awarded its attorneys' fees pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15 and California Business & Profession Code § 16750(a);

1 f) That NSS Labs be awarded its costs; and
2 g) That NSS Labs be awarded such other relief as the Court may deem just and proper.

3 **DEMAND FOR JURY TRIAL**

4 NSS Labs demands trial by jury for all issues so triable pursuant to Fed. R. Civ. P. 38(b)
5 and Civil L.R. 3-6(a).

6 Dated: September 18, 2018

7 FEINBERG DAY ALBERTI LIM & BELLOLI LLP

8 By /s/ Ian N. Feinberg
9 Ian N. Feinberg

10 *Attorneys for Plaintiff*
11 NSS Labs, Inc.

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